

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**JAMIEL JOHNSON,**

**Plaintiff,**

**v.**

**CO B.B. CLARKE,**

**Defendant.**

**Case No. 1:21-CV-121**

**MEMORANDUM ORDER**

This action was received by the Clerk of Court on April 13, 2021. The matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff alleges that his Eighth Amendment right to be free from cruel and unusual punishment was violated when Defendant Clarke used excessive force against him during an incident on February 10, 2019.

On June 2, 2022, Magistrate Judge Lanzillo issued a Report and Recommendation fully analyzing the *Whitley*<sup>1</sup> factors and recommending that Defendant's motion for summary judgment [ECF No. 36] be granted and Plaintiff's motions for summary judgment [ECF No. 49; ECF No. 52] be denied. *See* ECF No. 60. In response to the Report and Recommendation, Plaintiff filed objections [ECF No. 62; ECF No. 63] and a motion for leave to amend his objections [ECF No. 64].

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<sup>1</sup> *Whitley v. Albers*, 475 U.S. 312 (1986).

“If a party objects timely to a magistrate judge's report and recommendation, the district court must ‘make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2). Upon *de novo* review, the Court finds no error in Magistrate Judge Lanzillo’s Report and Recommendation as Plaintiff’s objections are a reiteration of his filings in opposition to Defendant’s summary judgment motion, as well as his own motions for summary judgment.

After *de novo* review of the complaint and documents and video evidence in the case, together with the report and recommendation and all objections thereto, the following order is entered:

AND NOW, this 19th day of July 2022;


IT IS ORDERED that Defendant’s motion for summary judgment [ECF No. 36] be granted.

IT IS FURTHER ORDERED that Plaintiff’s motions for summary judgment [ECF No. 49; ECF No. 52] be denied.

IT IS FURTHER ORDERED that Plaintiff’s motion to amend objections to Report and Recommendation [ECF No. 64] is granted. All the arguments in this filing were reviewed.

IT IS FURTHER ORDERED that final judgment is entered in favor of Defendant and against Plaintiff pursuant to Fed.R.Civ.P. 58.

AND IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on June 2, 2022 [ECF No. 60] is adopted as the opinion of the court.

  
SUSAN PARADISE BAXTER  
United States District Judge